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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SEMIH SECER

Appeal 2009-003640
Application 09/770,427
Technology Center 2400

Decided: March 16, 2010

Before JOSEPH L. DIXON, ST. JOHN COURTENAY III, and
THU A. DANG, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) (2002) from the Examiner's rejection of claims 1-35 and 37-64. Claim 36 is cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF THE CASE

INVENTION

The invention on appeal relates generally to network management systems. More particularly, Appellant's invention is directed to utilizing state-based polling to manage network elements. (Spec. 1).

ILLUSTRATIVE CLAIM

Claim 1: A method for implementing a state model for managing a network coupled to a central management system, said method comprising:

presenting a user interface for said central management system to enable a user to define at least one state model for managing said at least one network element based on a determined state of said at least one network element;

presenting a user interface for said central management system to enable a user to define at least one poll service that includes at least one of said at least one state model; and

executing said at least one poll service to manage said at least one network element.

PRIOR ART

The Examiner relies upon the following reference as evidence:

Vaishnavi US 5,734,642 Mar. 31, 1998

THE REJECTION

The Examiner rejected claims 1-35 and 37-64 under 35 U.S.C. § 102(b) as anticipated by Vaishnavi.

ISSUES

Based upon our review of the administrative record, we have determined that the following issues are dispositive in this appeal:

Issue 1: Under § 102, does Vaishnavi disclose or describe “presenting a user interface?” (Claim 1).

Issue 2: Under § 102, does Vaishnavi disclose or describe “at least one state model capable of being dynamically defined during runtime?” (Claims 48 and 64).

Issue 3: Under § 102, does Vaishnavi disclose or describe “receiving input from a user?” (Claim 35).

Issue 4: Under § 102 does Vaishnavi disclose or describe a “user-defined state model?” (Claim 59).

PRINCIPLES OF LAW

Anticipation under § 102

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992)).

Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference. In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.

Atlas Powder Co. v. IRECO, Inc., 190 F.3d 1342, 1346 (Fed. Cir. 1999) (citations omitted).

FINDINGS OF FACT

In our analysis *infra*, we rely on the following findings of fact (FF) that are supported by the record:

The Vaishnavi Reference

1. Vaishnavi discloses a general purpose computer that includes a central processing unit (CPU) coupled to random access memory (RAM) and program memory via a data bus. The general purpose computer disclosed in Vaishnavi does not include a display monitor, keyboard, or mouse. (Col. 4, ll. 29-41; Fig. 7).
2. Vaishnavi discloses that the polling manager provides poll requests to devices of the network to query the status of these devices. (Col. 5, ll. 6-8).
3. Vaishnavi discloses that status information sent to the network manager may include a “hardboot” message sent from a manageable device when the manageable device is initialized. (Col. 4, ll. 52-59).
4. Vaishnavi discloses determining the previous state of a device by accessing a memory location that stores the status information, or

querying a model such as the object-oriented model of the device model described above. (Col. 6, ll. 27-31; Fig. 4).

5. Vaishnavi discloses status information may include results from a discovery process. (Col. 5, ll. 24-25 and 44-56).
6. Vaishnavi discloses a model control module coupled to a network model. (Col. 4, ll. 7-10; Fig. 2). The model control module creates and maintains device models that represent the status of manageable devices. (Col. 4, ll. 13-15).

ANALYSIS

ISSUE 1

We decide the question of whether Vaishnavi discloses or describes presenting a user interface. (Claim 1).

Appellant contends that the general purpose computer illustrated in Fig. 7 of Vaishnavi does not include any user interface mechanism, and does not disclose any occasion in which a user interface mechanism would be required. (App. Br. 14).

The Examiner contends that although Vaishnavi does not explicitly disclose a user interface, it is well-known in the art that a general-purpose computer has a user interface that allows a user to input information. (Ans. 15). In the context of anticipation, we find the evidence before us supports the Appellant's position.

In particular, we agree with Appellant that the general purpose computer disclosed in Vaishnavi does not include any means in which a user interfaces with the general purpose computer, nor do we find such a user

interface to be inherent in Vaishnavi. (FF 1).¹ Moreover, the Examiner's reliance upon a "well-known" element or feature (i.e., a user interface) is misplaced in the context of anticipation, which requires that each claim element be expressly or inherently taught by the reference. *See Perricone* 432 F.3d at 1375. Based on the record before us, we find Vaishnavi does not disclose or describe a "user interface" as recited in independent claim 1. Accordingly, we reverse the Examiner's rejection under § 102 of independent claim 1 and associated dependent claims 2-34.

ISSUE 2

We decide the question of whether Vaishnavi discloses or describes "at least one state model capable of being dynamically defined during runtime." (Claims 48 and 64).

Appellant contends that Vaishnavi does not disclose dynamic definition of a poll service during runtime by a user because Vaishnavi teaches that device model creation happens when the network manager is presented with a new device. (App. Br. 15, para. 3).

In response, the Examiner contends that Vaishnavi discloses retrieving the previous state and status information *before the model control is initiated.* (Ans. 15) (emphasis added).

¹ Inherency ... may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745, (Fed. Cir. 1999) (internal citations omitted).

We note that the express language of the claim requires that the executing state model be capable of being defined *during runtime*. (*See* claim 48). We find, as admitted by Examiner (Ans. 15), that Vaishnavi discloses at best that the definition occurs *before* runtime.

Assumming *arguendo* that Vaishnavi's status information is considered as defining a poll service, according to Vaishnavi the status information 17 is received by the network manager *when the device is initialized*. (FF 2-3). Further, Vaishnavi does not specify when other types of status information operations are performed, such as the discovery process and the response to a poll request. (FF 2 and 4-5). Therefore, we find that the Vaishnavi's status information is not expressly nor inherently (necessarily) received by the network manager "during runtime" as required by the claim language. *See Robertson*, 169 F.3d at 745.

Based on the record before us, we find that Vaishnavi does not fairly disclose or describe "at least one state model capable of being dynamically defined during runtime," as recited in claims 48 and 64. Accordingly, we reverse the Examiner's rejection of independent claims 48 and 64, as well as the associated dependent claims 49-58.

ISSUE 3

We consider the question as to whether Vaishnavi discloses or describes “receiving input from a user,” as recited in independent claim 35.

Similarly to the discussion *supra* regarding claim 1, Appellant contends that the general purpose computer disclosed in Vaishnavi does not disclose a keyboard, monitor, or mouse, and the system described in Vaishnavi is automated. (App. Br. 14).

In response, the Examiner again contends that it is well-known that a general purpose computer has a user interface that enables a user to input information. (Ans. 15).

We agree with Appellant’s arguments for essentially the same reasons discussed *supra* regarding claim 1. The Examiner’s reliance upon a well-known element or feature (i.e., a user interface to receive input) is misplaced in the context of anticipation, as discussed *supra*. Based on the record before us, we find that Vaishnavi does not disclose or describe “receiving input from a user,” as recited in claim 35. Accordingly, we reverse the Examiner’s rejection of independent claim 35, as well as associated dependent claims 37-47.

ISSUE 4

We decide the question as to whether Vaishnavi discloses or describes “a user-defined state model” as recited in independent claim 59.

Appellant contends that user input is not needed in Vaishnavi because the system described therein is automated: a device status is determined, device data are collected, a new device status is determined, and an action is taken with respect to the device automatically. (App. Br. 14).

We are in agreement with Appellant's arguments. As stated above, we find that Vaishnavi does not disclose or describe any mechanism for user input. (FF 1). Further, we find that Vaishnavi does not state *how* the device models that represent the status of manageable devices are defined. (FF 5). Therefore, the Examiner has not established, and we do not find that a user or any other mechanism defines the device model as required by the claim language. Accordingly, we find that Vaishnavi does not disclose or describe "a user-defined state model" as recited in independent claim 59. Accordingly, we reverse the Examiner's rejection of independent claim 59 and associated dependent claims 60-63.

CONCLUSION

Based on the findings of facts and analysis above:

Vaishnavi does not disclose or describe "presenting a user interface." (Claim 1).

Vaishnavi does not disclose or describe "at least one state model capable of being dynamically defined during runtime." (Claims 48 and 64)

Vaishnavi does not disclose or describe "receiving input from a user." (Claim 35).

Vaishnavi does not disclose or describe "a user-defined state model." (Claim 59).

Appeal 2009-003640
Application 09/770,427

ORDER

We reverse the Examiner's rejection of claims 1-35 and 37-64 under 35 U.S.C. § 102(b).

REVERSED

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